

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-98905; File No. SR-ISE-2023-11)

November 13, 2023

Self-Regulatory Organizations; Nasdaq ISE, LLC; Order Approving a Proposed Rule Change to Amend the Short Term Option Series Program to Permit the Listing of Two Wednesday Expirations for Options on Certain Exchange Traded Products

I. Introduction

On May 31, 2023, Nasdaq ISE, LLC (“Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend the Exchange’s short term option series program (“Short Term Option Series Program”) in Supplementary Material .03 of Options 4, Section 5 (Series of Options Contracts Open for Trading). The proposed rule change was published for comment in the Federal Register on June 20, 2023.³ On August 2, 2023, the Commission designated a longer period within which to act on the proposed rule change.⁴ On September 15, 2023, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.⁵

This order approves the proposed rule change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 97719 (June 13, 2023), 88 FR 39876 (“Notice”).

⁴ See Securities Exchange Act Release No. 98040, 88 FR 53569 (August 8, 2023) (designating September 18, 2023, as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether the proposed rule change should be disapproved).

⁵ See Securities Exchange Act Release No. 98409, 88 FR 65208 (September 21, 2023). Comments on the proposed rule change are available at: <https://www.sec.gov/comments/sr-ise-2023-11/srise202311.htm>.

II. Description of the Proposal⁶

Currently, the Exchange may open for trading series of options on certain symbols that expire at the close of business on each of the next two Mondays, Tuesdays, Wednesdays, and Thursdays, respectively, that are business days and are not business days in which monthly options series or Quarterly Options Series expire (“Short Term Option Daily Expirations”).⁷ The Exchange proposes to expand the Short Term Option Series Program⁸ to permit the listing of two Wednesday expirations for options on the United States Oil Fund, LP, United States Natural Gas Fund, LP, SPDR Gold Shares, iShares Silver Trust, and iShares 20+ Year Treasury Bond ETF (collectively, “Wednesday ETP Expirations”).⁹

According to the Exchange, the Wednesday ETP Expirations would be similar to the existing Short Term Option Daily Expirations in that the Exchange may open for trading on any Tuesday or Wednesday that is a business day (beyond the current week)¹⁰ series of options on

⁶ For a full description of the proposal, refer to the Notice, supra note 3.

⁷ See Supplementary Material .03 to Options 4, Section 5. Currently, the Exchange may list no more than a total of two Monday and Wednesday expirations on the iShares Russell 2000 ETF (“IWM”) and no more than a total of two Monday, Tuesday, Wednesday, and Thursday expirations on the SPDR S&P 500 ETF Trust (“SPY”) and the Invesco QQQ Trust (“QQQ”). See Table 1, Supplementary Material .03 to Options 4, Section 5.

⁸ Options 1, Section 1(a)(49) provides that a Short Term Option Series means a series in an option class that is approved for listing and trading on the Exchange in which the series is opened for trading on any Monday, Tuesday, Wednesday, Thursday or Friday that is a business day and that expires on the Monday, Tuesday, Wednesday, Thursday, or Friday of the following business week that is a business day, or, in the case of a series that is listed on a Friday and expires on a Monday, is listed one business week and one business day prior to that expiration. If a Tuesday, Wednesday, Thursday or Friday is not a business day, the series may be opened (or shall expire) on the first business day immediately prior to that Tuesday, Wednesday, Thursday or Friday. For a series listed pursuant to this section for Monday expiration, if a Monday is not a business day, the series shall expire on the first business day immediately following that Monday.

⁹ The United States Oil Fund, LP, United States Natural Gas Fund, LP, SPDR Gold Shares, iShares Silver Trust, and iShares 20+ Year Treasury Bond ETF are referred to collectively as the “ETPs.”

¹⁰ The Exchange proposes to clarify the rule text in Supplementary Material .03 to Options 4, Section 5 to specify that it can list two Short Term Option Expiration Dates beyond the current week for each Monday, Tuesday, Wednesday, and Thursday expiration. Consistent with the current operation of the rule, the Exchange states that if it adds a Wednesday expiration (“Wednesday Expiration”) on a Tuesday, there

the ETPs that expire on any Wednesday of the month that is a business day and is not a Wednesday in which Quarterly Options Series expire.¹¹ And like Short Term Option Daily Expirations, in the event that Wednesday ETP Expirations would expire on a Wednesday, and that Wednesday is the same day that a Quarterly Options Series expires, the Exchange would skip that week's listing and instead list the following week; the two weeks would therefore not be consecutive. Options on each of the ETPs with Friday expirations would continue to have a total of five Short Term Option Expiration Dates, provided those Friday expirations are not Fridays in which monthly options series or Quarterly Options Series expire. The interval between strike prices for the proposed Wednesday ETP Expirations would be the same as those for the current Short Term Option Series for Friday expirations applicable to the Short Term Option Series Program.¹² As is the case with other equity options series listed pursuant to the Short Term Option Series Program, the Wednesday ETP Expirations series would be P.M.-settled.

In support of its proposal, the Exchange represents that it has an adequate surveillance program in place to detect manipulative trading in the proposed option expirations, in the same way that it monitors trading in the current Short Term Option Daily Expirations.¹³ The Exchange also represents that it has the necessary system capacity to support and properly monitor trading in the proposed new expirations.¹⁴ Additionally, the Exchange states that it does not believe that any market disruptions will be encountered with the introduction of these proposed option

would be three outstanding Wednesday Expirations at one time. See Notice, supra note 3, 88 FR at 39877, n.4.

¹¹ See id. at 39877.

¹² The Wednesday ETP Expirations would have a strike interval of \$0.50 or greater for strike prices below \$100, \$1 or greater for strike prices between \$100 and \$150, and \$2.50 or greater for strike prices above \$150.

¹³ See id. at 39884.

¹⁴ See id.

expirations.¹⁵ The Exchange currently trades Short Term Option Daily Expirations on SPY, QQQ, and IWM, including Wednesday Expirations, and states that it has not experienced any market disruptions nor issues with capacity.¹⁶ Further, the Exchange provides data comparing the ETPs to SPY, QQQ, and IWM, which have Wednesday Expirations today.¹⁷ According to the Exchange, the occurrence of the ETPs moving through at least one strike price after the close of trading has been less frequent than for SPY, QQQ, and IWM. In addition, the average annualized closing volatility in the last thirty minutes of trading for the ETPs has historically been lower than that of SPY, QQQ, and IWM.¹⁸ Finally, the Exchange states that the ETPs trade within “complexes” where, in addition to the underlying security, there are multiple highly-correlated instruments available for hedging.¹⁹ Therefore, the Exchange believes the proposal would not be a strain on liquidity providers.²⁰

III. Discussion and Commission Findings

The Commission received one supportive comment on the proposed rule change from a market maker. The commenter states that there is a great amount of liquidity in the Short Term Option Daily Expirations, and they do not cause market disruption and may be used to hedge more narrowly defined risks.²¹ The commenter expects that the proposed Wednesday ETP Expirations to exhibit the same characteristics and provide the same benefits.²²

¹⁵ See id.

¹⁶ See id. at 39878.

¹⁷ See id. at 39882-83.

¹⁸ See id. at 39883.

¹⁹ See id. at 39884.

²⁰ See id.

²¹ See letter from Richard J. McDonald, Susquehanna International Group, LLP (October 20, 2023).

²² See id.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with Section 6(b) of the Act.²³ The Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,²⁴ which requires, among other things, that a national securities exchange have rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

As noted above, the Exchange currently has Wednesday Expirations for SPY, QQQ, and IWM. The Exchange proposes to limit the listing of additional Wednesday Expirations to the five ETPs, which generally have similar or lower volatility in terms of post-closing and end of day volatility as SPY, QQQ, and IWM. And, like SPY, QQQ, and IWM, the ETPs have multiple highly-correlated instruments available for hedging. In addition, the Wednesday ETP Expirations will be subject to the same rules for Wednesday Expirations in SPY, QQQ, and IWM. Further, as noted above, the commenter expects that the proposed Wednesday ETP Expirations to exhibit the same characteristics and provide the same benefits as existing Short Term Option Daily Expirations in SPY, QQQ, and IWM.²⁵ The Exchange's proposal is reasonably designed as a limited expansion of Wednesday Expirations and may provide the investing public and other

²³ 15 U.S.C. 78f(b). In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁴ 15 U.S.C. 78f(b)(5).

²⁵ See supra note 22 and accompanying text.

market participants more flexibility to closely tailor their investment and hedging decisions using options on these ETPs, thus allowing them to better manage their risk exposure. Further, the Exchange has represented that it has an adequate surveillance program in place to detect manipulative trading in the Wednesday ETP Expirations and has the necessary systems capacity to support the new options series.²⁶ The proposal, which would overall add a small number of Wednesday ETP Expirations by limiting the additional Wednesday Expirations to five ETPs and to two weeks beyond the current week, reasonably balances the Exchange's desire to offer a wider array of investment opportunities with the need to avoid unnecessary proliferation of options series.

Therefore, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act²⁷ and the rules and regulations thereunder applicable to a national securities exchange.

²⁶ See supra notes 13 and 14, and accompanying text.

²⁷ 15 U.S.C. 78f(b)(5).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²⁸ that the proposed rule change (SR-ISE-2023-11), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁹

Sherry R. Haywood,

Assistant Secretary.

²⁸ 15 U.S.C. 78s(b)(2).

²⁹ 17 CFR 200.30-3(a)(12).